

§ 143B-146.16. Residential school personnel criminal history checks.

(a) As used in this section:

(1) "Criminal history" means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel. Such crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7B, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(2) "Residential school personnel" means any:

- a. Employee of a residential school whether full time or part time, or
- b. Independent contractor or employee of an independent contractor of a residential school, if the independent contractor carries out duties customarily performed by residential school personnel, whether paid with federal, State, local, or other funds, who has significant access to students in a residential school. Residential school personnel includes substitute teachers, driver training teachers, bus drivers, clerical staff, houseparents, and custodians.

(b) The Secretary shall require an applicant for a residential school personnel position to be checked for a criminal history before the applicant is offered an unconditional job. A residential school may employ an applicant conditionally while the Secretary is checking the person's criminal history and making a decision based on the results of the check.

The Secretary shall not require an applicant to pay for the criminal history check authorized under this subsection.

(c) The Department of Justice shall provide to the Secretary the criminal history from the State and National Repositories of Criminal Histories of any applicant for a residential school personnel position in a residential school. The Secretary shall require the person to be checked by the Department of Justice to (i) be fingerprinted and to provide any additional information required by the Department of Justice to a person designated by the Secretary, or to the local sheriff or the municipal police, whichever is more convenient for the person, and (ii)

sign a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories. The Secretary shall consider refusal to consent when making employment decisions and decisions with regard to independent contractors.

The Secretary shall not require an applicant to pay for being fingerprinted.

(d) The Secretary shall review the criminal history it receives on a person. The Secretary shall determine whether the results of the review indicate that the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as residential school personnel and shall use the information when making employment decisions and decisions with regard to independent contractors. The Secretary shall make written findings with regard to how it used the information when making employment decisions and decisions with regard to independent contractors.

(e) The Secretary shall provide to the State Board of Education the criminal history received on a person who is certificated, certified, or licensed by the State Board. The State Board shall review the criminal history and determine whether the person's certificate or license should be revoked in accordance with State laws and rules regarding revocation.

(f) All the information received by the Secretary through the checking of the criminal history or by the State Board in accordance with subsection (d) of this section is privileged information and is not a public record but is for the exclusive use of the Secretary or the State Board of Education. The Secretary or the State Board of Education may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(g) There shall be no liability for negligence on the part of the Secretary, the Department of Health and Human Services or its employees, a residential school or its employees, or the State Board of Education, Superintendent of Public Instruction, or their members or employees, individually or collectively, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes. (1998-131, s. 5; 2012-12, s. 2(xx); 2015-181, s. 47; 2016-126, 4th Ex. Sess., s. 27.)